IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

GREGORY HALL	*	
Plaintiff,	*	
v.	*	CASE NO.: CAL12-36913
PRINCE GEORGE'S COUNTY DEMOCRATIC CENTRAL COMMITTEE	*	
AND	*	
MARTIN O'MALLEY Governor of the State of Maryland and Individually	*	
AND	*	
MICHAEL E. BUSCH Speaker of the House of Delegates and Individually	*	
Defendants,	*	
v.	*	
TIFFANY T. ALSTON	*	
Third-Party Plaintiff/ Intervener.	*	

OPINION AND ORDER OF THE COURT

"Every path hath a puddle."

-- George Herbert

The circumstances of this case do little for the good name and reputation of our state and even less for our county. Tiffany Alston was convicted in June by a jury of her peers of stealing $800.00 from her employer, the people of the State of Maryland. On a second matter, Ms. Alston pleaded *nolo contendere* to stealing from her friends and supporters who

contributed to her campaign fund. Subsequent to Ms. Alston's plea, and after the Circuit Court for Anne Arundel County imposed a suspended sentence and a period of probation, the Attorney General concluded that her seat in the General Assembly had become vacant. The Prince George's County Democratic Central Committee then submitted the name of Gregory Hall to the Governor as a replacement for Ms. Alston's seat. Mr. Hall's criminal record became such an issue that the Governor requested that the Central Committee withdraw their submission of his name. Mr. Hall then instituted this action against the Central Committee. The suit now requests injunctive and other relief against the Governor and the Central Committee. Ms. Alston was joined as a third party plaintiff and intervener. She requests injunctive and other relief against the Governor and the Speaker of the House of Delegates.

It is our sincere hope that the people of the 24th Legislative District of Maryland are fully represented as quickly as possible within the boundaries imposed by our laws. The issues are of a constitutional dimension and are of great importance to all the parties, especially to the people they represent. We view our role as merely a reviewer of the process and realize that political questions are not for us or any other court to answer.

Mr. Hall and Ms. Alston's complaints and the Defendants' motions for summary judgment present three major and interrelated questions:

1. Whether the granting of probation before judgment by the Circuit Court for Anne Arundel County acted to restore Ms. Alston to her seat in the 24th Legislative District?
2. May the Central Committee withdraw the submission of a name to the Governor for appointment, and if so, when?

3. Under Article III, § 13 of the Maryland Constitution, are the provisions requiring that the Governor act within fifteen days directory or mandatory?

For the reasons set forth, the Court grants summary judgment in favor of the Defendants and against the Plaintiffs. The Court holds that:

1. Article XV, § 2 of the Maryland Constitution removed Ms. Alston from her 24th Legislative District seat on October 9, 2012, and subsequent events did not act to restore her to that seat.
2. The Central Committee had the right as of November 26, 2012, to withdraw its submission of the name of Mr. Hall to the Governor, and maintains that right unless and until the Governor actually appoints Mr. Hall. However, if Mr. Hall's name is withdrawn, the Central Committee lost the right to make another binding submission to the Governor as of November 9, 2012.
3. Under Article III, § 13 of the Maryland Constitution, the provisions requiring that the Governor act within fifteen days are directory.

Procedural Background

This case comes before the Circuit Court for Prince George's County on Plaintiff Gregory Hall's Verified Second Amended Complaint for Writ of Mandamus, Temporary Restraining Order and Preliminary and Permanent Injunctive Relief, and Declaratory Judgment against Defendant Prince George's County Democratic Central Committee ("Central Committee") and Defendant Governor Martin O'Malley. Plaintiff Tiffany Alston was joined and granted leave to intervene in the matter as a third-party plaintiff. Ms. Alston filed a Complaint for Temporary, Preliminary, and Permanent Equitable Relief Including Declaratory Relief, Writ of Mandamus, and Writ of Prohibition against Defendants Martin O'Malley, Governor of the State of Maryland, and Michael E. Busch, Speaker of the House of Delegates. The Court deems the Complaint as a cross-complaint against the Governor and a third-party complaint against the Speaker.

In response to Mr. Hall and Ms. Alston's complaints, the Governor and the Speaker filed a joint Motion for Summary Judgment. The Central Committee filed a separate motion for summary judgment. Mr. Hall filed his own motion for summary judgment as well. All parties have agreed that this Court has the appropriate jurisdiction, venue and authority to decide the questions submitted to it.

Facts

A. Ms. Alston's Conviction and Sentencing

Tiffany Alston was sworn in as a member of the House of Delegates representing the 24th Legislative District on January 11, 2011. On September 23, 2011, Ms. Alston was

indicted ("Alston I"[8]) for using campaign funds belonging to the campaign finance entity, "Friends of Tiffany Alston," for her private benefit, including payments to herself, an employee at her law firm, and for her wedding expenses. On December 15, 2011, Ms. Alston was indicted ("Alston II"[9]) for theft under $1,000 and common law misconduct in office on allegations that Ms. Alston used state money to pay an employee for work at her private law firm.

The two cases were set for separate trials before the Circuit Court for Anne Arundel County (Harris, J.) Alston II was scheduled for trial first. On June 12, 2012, a jury convicted Ms. Alston of theft of less than $1,000 and misconduct in office. Sentencing was deferred until November 5, 2012. The trial of Alston I was set for October 9, 2012. On September 26, 2012, Ms. Alston entered into a plea agreement with the State Special Prosecutor to resolve both matters. The plea agreement stated in pertinent part:

> 1. "Ms. Alston further agrees to waive her rights to any and all further post-conviction and appellate proceedings in Case [Nos. 02K11002040 and 02K11002626]."
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> 2. "The State will recommend, and Ms. Alston will not contest, that Ms. Alston be sentenced on Count 2, Misconduct in Office, in [Case No. 02K11002626] to one year incarceration with the entire term suspended, followed by three years of probation. As conditions of that probation, the State will recommend, and Ms. Alston will not contest, that the Court order that Ms. Alston (1) pay restitution of $800.00 to the Maryland General Assembly and (2) perform 300 hours of community service at a mutually agreed upon legitimate, non-profit or governmental agency. . . . The State will recommend that the Defendant receive probation before judgment on Count 1, misdemeanor theft. The Defendant may seek a Modification of Sentence requesting probation before judgment on the misconduct in office conviction. The State shall remain silent and the Court agrees to bind itself to striking the guilty conviction and granting Ms. Alston probation before judgment on Count 2 in [Case No. 02K11002626] immediately upon (i) completion of three hundred hours of community service, (ii) payment of $800.00 in restitution, and (iii) payment of a civil citation fine in the amount of $500.00."

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[8] *State v. Tiffany Alston*, Circuit Court for Anne Arundel County, Case No. 02K11002040.

[9] *State v. Tiffany Alston*, Circuit Court for Anne Arundel County, Case No. 02K11002626.

3. "[W]ith respect to [Case No. 02K11002040], Ms. Alston will tender an Alford Plea[10] to Count 4 of the indictment, Fraudulent Misappropriation by a Fiduciary. The State will recommend that the Defendant be sentenced to probation before judgment. In addition, the State will issue and Ms. Alston agrees to pay a non-criminal civil citation in the amount of $500.00 for a violation of Section 13-218(d)(3) of the Election Law Article. The State agrees to enter a nol pros [sic] to counts 1, 2, 3 and 5 of the indictment upon the court's acceptance of her guilty plea to Count 4."

See Letter from E. Davitt to Abdullah & J. Gordon, Sept. 26, 2012, (O`Malley Ex. 3).

On October 9, 2012, Ms. Alston pleaded *nolo contendere* to the fraudulent misappropriation count. The Circuit Court for Anne Arundel County accepted the *nolo contendere* plea, but struck the finding of guilt and stayed the entry of judgment under Crim. Proc. § 6-220(b) ("probation before judgment"). *See* Criminal Hearing Sheet (Case No. K-11-2626-IN), Oct. 9, 2012 (O'Malley Ex. 5). On the theft charge in Alston II, on which she had been found guilty by the jury, the Circuit Court for Anne Arundel County also granted Ms. Alston probation before judgment. *See* Criminal Hearing Sheet (Case No. K-11-2626-IN), Oct. 9, 2012 (O'Malley Ex. 6). On the misconduct in office charge of Alston II, the Circuit Court for Anne Arundel County sentenced Ms. Alston to one year of incarceration-then suspended it, 3 years of supervised probation, 300 hours of community service, and restitution to the State of Maryland in the amount of $800.00. *Id.* As part of the plea agreement, and as reflected on the criminal hearing sheets, Ms. Alston waived all appellate rights: "Ms. Alston further agrees to waive her rights to any and all further post-conviction and appellate proceedings." *See* O'Malley Ex. 4.

With respect to a prospective motion by Ms. Alston for modification of her sentence, the Circuit Court for Anne Arundel County stated that while it was not bound to grant the

[10] The Alford Plea language is a mistake in the plea letter. All parties agree that it should have read "*nolo contendere*." Ms. Alston did in fact enter a plea of *nolo contendere* to this count.

petition for sentence modification, it would certainly entertain it once Ms. Alston fulfilled the terms of her sentence. *See* Alston Ex. 1 (This is an audio recording of the proceedings, not a written transcript).[11] Ms. Alston immediately filed a motion for modification and asked that it be held *sub curia*. After completing her obligations under the plea agreement, Ms. Alston appeared on November 13, 2012.[12] The Court granted the motion, "struck" the finding of guilt, and entered probation before judgment on the sole count—misconduct in office—for which she had been sentenced. *See* O'Malley Ex. 7. Ms. Alston waived her appellate rights and did not appeal her conviction.

B. Submission of Gregory Hall to Fill Seat

On October 10, 2012, the Speaker of the House of Delegates determined that Ms. Alston had been "suspended from elective office by operation of law without pay or benefits" effective October 9, 2012.[13] The Speaker subsequently took the necessary steps to execute the suspension.

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[11] At 9:44:27AM, the Circuit Court for Anne Arundel County stated, "Alright that makes the plea….now, the State is presenting this and the defendant is accepting these terms. It's not binding on this court; however I did indicate that in all probability that I would accept the plea as stated. Are we all on board there?" (Ms. Alston provided an audio recording of the proceedings, but not a formal written transcript. This is the Court's best rendering of the audio recording.)

At 9:47:15AM, the Circuit Court for Anne Arundel County stated, "Alright just to be clear on that point, this plea is not presented to the court as a binding ABA plea. It simply takes on the recommendations made by the State and the Defense and I don't want to stand in the way of whatever plea you all have worked out. You know more about this case than I do. So I indicated that I will go along with it, even though it's not an ABA binding plea."

[12] The hearing was originally set for November 9, 2012 but the State was not satisfied at that date that Ms. Alston had satisfied her community service hours.

[13] *See* Letter of Advice from the Office of the Attorney General to the Hon. Michael E. Busch, Speaker of the House of Delegates (Oct. 10, 2012).

On November 2, 2012, the Central Committee conducted an election pursuant to Art. III, § 13 of the Maryland Constitution to fill the vacant seat. Mr. Hall won this election. On November 7, 2012, the Central Committee submitted Mr. Hall's name in writing to the Governor to be appointed as the Delegate for the vacant 24th Legislative District seat. The Governor received Mr. Hall's name the same day.

C. Attempted Withdrawal of Gregory Hall's Name

Soon after the submission of Mr. Hall's name to the Governor, media attention began to be focused on Mr. Hall's prior criminal record. In 1992, Mr. Hall pleaded guilty to possession of a handgun in connection with a shooting that resulted in the slaying of a 13-year-old boy.[14]

The Governor, although aware of the opinion of the Attorney General set forth in the November 1, 2012 letter to the Speaker,[15] requested that the Central Committee "withdraw Mr. Hall's name and take no further action" concerning the vacated 24th Legislative District seat until such time as the Governor received a formal opinion from the Office of the Attorney General. On November 17, 2012, the Assistant Secretary of the Central Committee [16] issued an agenda for the November 20, 2012 meeting of the Committee containing an "Action Item" of "Withdrawal of District 24 nomination to Governor." *See* Hall Complaint Ex. 5.

Mr. Hall immediately requested a temporary restraining order against the Central Committee to enjoin them from withdrawing his name. The Court held an emergency hearing

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[14] *See* State of Maryland v. Gregory Antoine Hall , CT921107B (Cir. Ct. for Pr. Geo. Cnty.).

[15] This opinion was a follow-up letter to fully address the issues briefly discussed in the expedited October 10, 2012 letter of advice.

[16] Mr. Alonzo Washington

on November 20, 2012. The parties agreed that the Central Committee would not submit a new name to the Governor while litigation was pending. The Court, however, declined to grant the temporary restraining order.

The Central Committee met at its regularly scheduled meeting on November 20, 2012 and voted 12-8 to take no action concerning the Governor's request to rescind Gregory Hall's submission to the vacant 24th Legislative District seat. Only hours before the meeting took place, the Office of the Attorney General issued a formal opinion to the Governor and concluded, as it had in its November 1, 2012 Letter of Advice, [18] that the 24th Legislative District seat previously held by Tiffany Alston was vacated on October 9, 2012 when "Ms. Alston was removed from office, by operation of law, by virtue of her conviction for official misconduct and her waiver of her rights of appeal." *See* November 20, 2012 Opinion of the Attorney General, 97 *Op. Atty. Gen. Md.* __(2012) (Hall Complaint Ex. 10).

On November 24, 2012, the Chairman called an emergency meeting to be held on November 26, 2012 for them to again discuss the Governor's request to withdraw the submission of Gregory Hall's name. On November 26, 2012, the Court held a hearing on Mr. Hall's Motion for a Temporary Restraining Order to enjoin the Central Committee from withdrawing the submission of his name to the Governor. The parties stipulated and the Court ordered that—without prejudice—the Central Committee would take no binding action regarding the withdrawal of Mr. Hall's name to represent the 24th Legislative District in return for preserving their rights as they existed on November 26, 2012. The Court agreed to hold an expedited hearing on December 4, 2012 and did so.

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[18] *See* Hall Complaint Ex. 1.

Discussion

Under Rule 2-501 (summary judgment), "[t]he court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." All parties—except for Ms. Alston—agree that there are no genuine disputes of material facts in this case.

Ms. Alston disputes the conclusion of the November 20, 2012 Opinion of Attorney General that the Circuit Court for Anne Arundel County was not bound by the plea agreement.[20] Ms. Alston argues that the plea agreement was in fact binding. Defendants do not think it is relevant and did not argue this fact in the course of this litigation. First, this is not a *factual* dispute, but rather a legal dispute as to the legal effect of the words of the sentencing judge. Second, it is not a *genuine* dispute because the audio recording of the October 9th hearing[21] and a transcript of the November 13th hearing[22] are in evidence. There is no dispute as to what was said in those hearings. Moreover, whether the plea was binding is not *material* to our analysis. Whether the plea was binding or not, the fact that Ms. Alston's motion to modify her sentence to probation before judgment was granted is not in dispute.

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[20] At the December 4, 2012 hearing, notwithstanding the Court's invitation, Ms. Alston called no witnesses. However, she produced an audio transcript of her hearing in the Circuit Court for Anne Arundel County. *See* Alston Ex. 1.

[21] *Id.*

[22] O'Malley Ex. 1.

Therefore, we grant summary judgment in favor of the Defendants. In doing so, the Court considers the audio recording of the October 9th hearing,[23] Governor and Speaker's Exhibits 1 through 7,[24] Gregory Hall's Verified Second Complaint Exhibits 1 through 11,[25] the Governor and Speaker's Motion for Summary Judgment Exhibits 1 through 12,[26] and the Central Committee's Motion for Summary Judgment Exhibits A and B.[27]

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[23] Alston Ex. 1.

[24] Nov. 13, 2012 Hearing Transcript (Ex. 1); Indictment, *State v. Tiffany Alston*, Case No. K-11-2040-IN(Ex.2); Indictment, *State v. Tiffany Alston*, Case No. K-11-2626-IN (Ex.2); Letter from E. Davitt to R. Abdullah & J. Gordon (Sept. 26, 2012) (Ex. 4); Criminal Hearing Sheet (Case No. K-11-2040-IN) (Oct. 9, 2012) (Ex. 5); Criminal Hearing Sheet (Case No. K-11-2626-IN) (Oct. 9, 2012) (Ex. 6); Criminal Hearing Sheet (Case No. K-11-2626-IN) (Nov. 13, 2012) (Ex. 7).

[25] November 1, 2012 Letter of the Attorney General of Maryland, Office of Counsel to the General Assembly (Ex.1); Art. III, § 13 of the Maryland Constitution (Ex. 2); November 16, 2012 Letter from Governor Martin O'Malley to Defendant (Ex. 3); Washington Post, "O`Malley asks Prince George's Democrats to withdraw delegate nominee," Nov. 20, 2012 (Ex. 4); Agenda for November 20, 2012 PGCDCC Meeting (Ex. 5); Constitution of the PGCDCC (Ex. 6); Bylaws of the Maryland Democratic Central Committee (Ex. 7); November 15, 2012 Letter from Jennifer A Jenkins, Councilwoman, Ward III to the Honorable Joanne C. Benson (Ex. 8); November 15, 2012 Letter from Andrea C. Harrison, Councilwoman, District 5 to the Honorable Martin O'Malley (Ex. 9); November 20, 2012 Opinion of the Attorney General, 97 Op. Atty. Gen. Md. __(2012) (Ex. 10); November 24, 2012 e-mail from Terry Speigner concerning "emergency meeting" (Ex. 11).

[26] Indictment, *State v. Tiffany Alston*, Case No. K-11-2040-IN(Ex.1); Indictment, *State v. Tiffany Alston*, Case No. K-11-2626-IN (Ex.2); Letter from E. Davitt to R. Abdullah & J. Gordon (Sept. 26, 2012) (Ex. 3); Criminal Hearing Sheet (Case No. K-11-2040-IN) (Oct. 9, 2012) (Ex. 4); Criminal Hearing Sheet (Case No. K-11-2626-IN) (Oct. 9, 2012) (Ex. 5); Criminal Hearing Sheet (Case No. K-11-2626-IN) (Nov. 13, 2012) (Ex. 6); 79 Opinions of the Attorney General 438, 439 (1994) (Ex. 7); Letter of Advice to T. Michael Scales, Chairman, State Central Committee of the 44th Legislative District (Feb. 12, 1998) (Ex. 8); 62 Opinions of the Attorney General 453 (1977) (Ex. 9); Letter from Assistant Attorney General Robert A. Zarnoch to Senator Ralph M. Hughes (Nov. 18, 2003)(Ex. 10); Letter from Assistant Attorney General Robert A. Zarnoch to Delegate Jake Mohorovic (Nov. 26, 2002) (Ex. 11); Letter to Delegate Jolene Ivey (Nov. 20, 2012) (Ex. 12).

[27] Affidavit of Terry Speigner (Ex. A); November 20, 2012 Letter of Advice to the Honorable Jolene Ivey (Ex. B).

The parties have also asked the Court to render a declaratory judgment. As provided in Subtitle 4 of the Courts and Judicial Proceedings Article, the purpose of declaratory judgment "is remedial. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. It shall be liberally construed and administered." Cts. and Jud. Proc. § 3-402. This Court has jurisdiction to "declare rights, status, and other legal relations." Cts. and Jud. Proc. § 3-403.

Moving to the substantive questions of law in this case, we will first answer whether the 24th Legislative District seat is in fact vacant in Section (I). Next, in Section (II) we will address whether the Central Committee has the ability to withdraw the submission of Mr. Hall's name to the Governor. Finally, in Section (III), we will determine whether the constitutional provision stating that the Governor "shall" act within fifteen days is mandatory or directory.

I. The 24th Legislative District seat became vacant on October 9, 2012 and Tiffany Alston was permanently removed from her seat by operation of law.

Ms. Alston argues that when she received a probation before judgment pursuant to Criminal Procedure Article § 6-220(b) on November 13, 2012, she was automatically reinstated into the House of Delegates by operation of law. We disagree.

Article XV, § 2 of the Maryland Constitution provides for the suspension and removal of elected officials who are convicted of certain crimes:

> Any elected official of the State, or of a county or of a municipal corporation who during his term of office is convicted of or enters a plea of nolo contendere to any crime which is a felony, or which is a misdemeanor related to his public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be suspended by operation of law without pay or benefits from the elective office. During and for the period of suspension of the elected official, the appropriate governing body and/or official authorized by law to fill any vacancy in the

> elective office shall appoint a person to temporarily fill the elective office, provided that if the elective office is one for which automatic succession is provided by law, then in such event the person entitled to succeed to the office shall temporarily fill the elective office. *If the conviction becomes final, after judicial review or otherwise, such elected official shall be removed from the elective office by operation of Law and the office shall be deemed vacant. If the conviction of the elected official is reversed or overturned, the elected official shall be reinstated by operation of Law* to the elective office for the remainder, if any, of the elective term of office during which he was so suspended or removed, and all pay and benefits shall be restored.

Md. Const., Art. XV, § 2 (2012) (emphasis added).

As the resolution of this issue requires constitutional interpretation, we first review the guidance the Court of Appeals has provided to us for interpreting statutory or constitutional text:

> We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions, and our analysis ends. If, however, the language is subject to more than one interpretation, or when the language is not clear when it is part of a larger statutory scheme, it is ambiguous, and we endeavor to resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose, as well as the structure of the statute.

People's Ins. Counsel Div. v. Allstate Ins. Co., 408 Md. 336, 351 (2009) (quotation and citations omitted).

Ms. Alston was suspended from office following her conviction by a jury of misconduct in office on June 12, 2012. This is a qualifying crime under Article XV, § 2 and that, upon the Court's imposition of a sentence, the charge became a "conviction." As such, it became a proper basis for her suspension from the House of Delegates under Article XV, § 2. The crime is a misdemeanor, related to her public duties, involves moral turpitude[28], and

[28] *See generally, Sidwell v. State Bd. of Chiropractic Examiners*, 144 Md. App. 613, 618-619 (2002) ("[T]he expression "moral turpitude" speaks primarily to truthfulness, for the business

carries a potential penalty of incarceration. Accordingly, the crime meets all necessary criteria under Article XV, § 2. *See* 62 *Op. Atty. Gen. Md.* 365, 371 (1977). Ms. Alston does not dispute this.

The heart of the matter is whether Ms. Alston's conviction has "become final, after judicial review or otherwise" under Article XV, § 2, thus causing her to be permanently removed from elective office, or whether the trial court's subsequent modification of her sentence to probation before judgment means that her conviction has been "reversed or overturned," thereby allowing Ms. Alston to be reinstated.

The plain language and structure of Article XV, § 2 describes a two-step process when an elected official is suspended from office pending any appeal after being convicted of a qualifying crime. If the conviction is "reversed or overturned," the official is "reinstated by operation of Law." Md. Const. Art. XV, § 2. The second possibility is that the "conviction becomes final, after judicial review *or otherwise*." *Id.* (emphasis added). In that event, "such elected official shall be removed from the elective office by operation of Law and the office shall be deemed vacant." *Id.*

The Attorney General opined in his November 20th opinion that under the plain language of the provision, "if the official wins her appeal, she is reinstated; if she loses her appeal or fails to appeal altogether, she is removed." 97 *Op. Atty. Gen. Md.* __ (2012). We hold that Article XV, § 2 means that a conviction becomes final when it is no longer subject to appeal. We agree with the Attorney General that finality can come as a result of unsuccessfully pursuing an appeal ("judicial review") or as a result of waiving or failing to pursue appellate rights ("otherwise"). *Id.*

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of professional licensing and public appointments, the expression strikes the broader chord of public confidence in the administration of government.")

As applied to Ms. Alston's charge for misconduct in office, this conviction became final, not by "judicial review," but "otherwise," because she waived the right to appeal on October 9, 2012.[29] For the sake of argument, even if an appeal remained available, Ms. Alston was required to file any such appeal within 30 days of her October 9th conviction under Rule 8-202—which she failed to do. Ms. Alston's interpretation conflicts with the plain language of the Constitution because once a conviction is no longer subject to appeal, it is no longer subject to being "reversed or overturned," which provides the only basis by which an official can be restored to office under Article XV. *See Pratt v. Warden*, 8 Md. App. 274, 277 (1969) (at least for purposes of post-conviction collateral review, "if no direct appeal is noted, the conviction becomes final at the time the availability for appeal has been exhausted"). Thus, when the Circuit Court for Anne Arundel County exercised its revisory power and granted Ms. Alston probation before judgment on November 13th, the conviction had already become final for purposes of Article XV.

Ms. Alston's interpretation would require the Court to hold that the Circuit Court for Anne Arundel County's revisory power, though not an appeal, is encompassed within the term "judicial review" as used under Article XV. We decline to do so.

Such an interpretation would require the Court to read the words "reversed or overturned" as including the words "modified." It would also require the Court to understand 'reversing' and 'overturning' as actions that may be taken by a trial court over its own decisions. Yet these words are more normally and naturally understood as appellate actions.

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[29] *See* 62 *Op. Atty Gen. Md.* 365, n.4 (1977) (citing *Keogh v. Wagner,* 20 App. Div. 2d 380, 247 N.Y.S. 2d 269 (1964), *aff'd* 15 N.Y.S. 2d 569, 254 N.Y.S. 2d 823 (1964) ("Whether the trial judge suspends sentence, or suspends execution of the sentence, he has imposed a sentence for purposes of entering a judgment of conviction.").

See 97 *Opinion of the Attorney General* __ (2012). [30] The common usage of the term "judicial review" refers to reviewing the decision of *other* courts or agencies. Black's Law Dictionary defines "judicial review" as:

> 1. A court's power to review the actions of *other* branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional.
> 2. The constitutional doctrine providing for this power.
> 3. *A court's review of a lower court's or an administrative body's factual or legal findings.*

Black's Law Dictionary 924 (9th ed. 2009) (emphasis added). Conspicuously absent in these definitions is mention of a court reviewing its own findings. More importantly, the Court is unaware of any instance in which "judicial review" has been understood to refer to a court's review of its *own* decision. *See* 97 *Opinion of the Attorney General* __ (2012).

In addition to the case law, the language used in the Maryland Rules cautions against Alston's interpretation of judicial review. The Rules do not use the terms "reverse" or "overturn" to describe the circuit courts' actions with regard to their own judgments. For example, Rule 4-343 uses the words "set aside" for purposes of writs of actual innocence. With respect to motions for new trial, Rule 4-331 uses the terms "revise" and "set aside."[31] Most importantly, Rule 4-345—which formed the basis

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[30] We note that "judicial review" is still used to refer to a circuit court's review of both agency decisions and lower court decisions, *see, e.g.*, S. *Easton Neighborhood Ass'n v. Town of Easton*, 387 Md. 468, 476 (2005) ("Further judicial review of the Circuit Court's order upholding the Town Council's decision to close Adkins Avenue cannot be maintained as an action for judicial review of an administrative agency's decision.").

[31] Rule 4-331(b) provides:

(b) Revisory power. The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

for the Circuit Court for Anne Arundel County modification of Ms. Alston's sentence—uses many words to describe its effect, but never "reverse" or "overturn." *See* Rule 4-345 (using terms "correct," "modify," "reduce," "vacate," and "revise").[32] Given that the circuit courts do not engage in "judicial review" of their own decisions, we give the term "judicial review" its plain language meaning. Accordingly, we find that as used in Article XV, § 2, "judicial review" is inapplicable to Ms. Alston's case.

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(1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

(2) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

[32] Rule 4-345. Sentencing -- Revisory power of court

(a) Illegal sentence. The court may correct an illegal sentence at any time.

(b) Fraud, mistake, or irregularity. The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of mistake in announcement. The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

(d) Desertion and non-support cases. At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification upon motion.

(1) Generally. Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

* * *

We believe that our interpretation of "judicial review" is supported by the purpose of Article XV. "In statutory interpretation, our primary goal is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the Rules." *People's Ins. Counsel Div.*, 408 Md. at 351.

Our reading of Article XV, § 2 promotes the provision's primary purpose, which is to remove from office those elected officials who are found guilty of crimes that undermine the public trust in and the integrity of the General Assembly. Allowing Ms. Alston to retain her seat despite her finding of guilt and conviction frustrates the very purpose of Article XV: to restore the public trust in our elected officials and the institutions in which they serve. *See also Attorney Grievance Comm'n v. Gerald Isadore Katz*, No. 86, September Term 2011, at 12 (Md. Nov. 19, 2012); 65 *Op. Atty. Gen. Md.* 445, 449 (1980) (observing that "the primary purpose of Article XV, § 2 clearly is to provide for the suspension from office of a convicted official; it is not concerned with the treatment of an official convicted after his term of office").

The Court's interpretation of Article XV is also consistent with an understanding of motions for modification of sentence as collateral criminal remedies, which may be granted only after a criminal conviction becomes final. *See generally* Michael A. Millemann, Collateral Remedies in Criminal Cases in Maryland, An Assessment, 64 Md. L. Rev. 968 (2005). It is well established that the revisory power available under Rule 4-345 provides for remedies that may be granted *only after* a criminal conviction becomes final—not before. *See State v. Griffiths*, 338 Md. 485,

496 (1995) (describing Rule 4-345 as providing "a method of opening a judgment otherwise final and beyond the reach of the court.").

Ms. Alston relies on *Linkletter v. Walker*, 381 U.S. 618 (1965) and *Terry v. Warden*, 243 Md. 610 (1966) to support her position that her conviction was not final on October 9, 2012. Neither case advances her position. The United States Supreme Court said in *Linkletter* that a conviction is final when the availability of appeal is exhausted. 381 U.S. at 622, fn. 5. In *Terry*, the Court of Appeals cited *Linkletter* and explained, "the Supreme Court has defined finality as denoting the point of time when the Courts are powerless to provide a remedy for the defendant on direct review." *Terry*, 243 Md. at 612. When Ms. Alston waived her rights to appeal on October 9, 2012, the courts were in fact powerless to provide a remedy for her on direct review. Indeed, her Rule 4-345 motion to modify her sentence and request for a probation before judgment was a collateral remedy—not a direct appeal. Thus, Ms. Alston's conviction was final for purposes of Article XV.

We do not attempt a comprehensive definition of the terms 'probation before judgment' or 'conviction' because their precise meanings vary according to the context. *See Shilling v. State*, 320 Md. 288, 296 (1990); *Myers v. State*, 303 Md. 639, 642-45 (1985). For example, in *Myers v. State*, the Court of Appeals held that a witness who was found guilty of perjury, but who was given probation before judgment, was competent to testify in her husband's murder trial because she was not *convicted* of perjury for purposes of the Cts. & Jud. Proc. Art. § 9-104. 303 Md. at 647-48. While discussing the *Myers* case in *Abrams v. State of Maryland*, 176 Md. App. 600, 612 (2007) the Court of Special Appeals observed that, "[i]n later

cases, whether a probation before judgment constituted a 'conviction' again depended on the context and purpose of the use of the term 'conviction.'"[33] The *Abrams* court held that "where a probation before judgment subjects a person to significant collateral consequences, such probation before judgment constitutes a 'conviction' for purposes of *coram nobis* relief." *Id.* at 617.

For purposes of Article XV, the fact that Ms. Alston's guilty verdict was "struck" 35 days after she was sentenced does not mean the conviction never occurred. At her November 13, 2012 hearing, the Circuit Court for Anne Arundel Court made it clear that this was not its intent. The transcript from the hearing reveals that the Circuit Court for Anne Arundel County rejected the "*non pro tunc*" language in Ms. Alston's proposed order that would have made her probation before judgment effective on October 9, 2012. The Circuit Court for Anne Arundel County expressly denied the fact that it was reversing or overturning the conviction:

> "See where it says ordered? It's not a question of reversing the conviction . . . Well, I don't like any of the language in it [the proposed order]. It's not consistent with the law. . . . A probation before judgment is not a reversal before conviction. . . .Nor is a conviction overturned by operation of law. That's not what a PBJ is. A PBJ is striking a guilty finding off the record.

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[33] Two of those "later cases" were *Jones v. Baltimore City Police Department*, 326 Md. 480 (1992) and *Curry v. Department of Public Safety & Correctional Services*, 102 Md. App. 620 (1994). In *Jones*, the Court of Appeals held that a police officer was entitled to an administrative hearing before punitive action was taken because he had not been "convicted of a felony" within the meaning of The Law Enforcement Officers' Bill of Rights (LEOBR), Maryland Code (1957, 1992 Repl.Vol.) Art. 27, §§ 727-734D, when that officer had been found guilty on two counts of distribution of and possession of child pornography, but granted probation before judgment. 326 Md. at 489-90 (finding that the legislature did not intend probation before judgment to be a final judgment for purposes of issue preclusion). In *Curry*, the Court of Special Appeals held that Md. Ann. Code, Article 27 § 641(c) did not prohibit a state employer from suspending an employee for receiving probation before judgment.

That's for staying the imposition of a guilty finding. It's not reversing a guilty finding."

See November 13, 2012 Hearing Transcript (1-5:11 to 1-6:7).

We express no opinion as to whether probation before judgment may always be considered a conviction in all circumstances. The Court confines its holding as to whether or not Ms. Alston's conviction constituted a final conviction. We hold that Ms. Alston was 'convicted' for purposes of Article XV and removed from office.

Ms. Alston's conviction was rendered final by virtue of her receiving a conviction and simultaneously forfeiting her appellate rights, as well as by her subsequent failure to file any appeal she may have had within the thirty days allowed under Rule 8-202(a). At that time, Ms. Alston's conviction was final and could no longer be "reversed or overturned" absent a collateral remedy. Rather, her conviction became final, not by "judicial review," but "otherwise," by her waiver of, and failure to exercise, her appeal rights.

Therefore, we conclude that Ms. Alston was removed from office by operation of law on October 9, 2012 by virtue of her conviction for official misconduct and her waiver of her rights of appeal. The Court is mindful of the fact that Ms. Alston's motion to modify her sentence pursuant to Rule 4-345 was granted and she was given probation before judgment. The Circuit Court for Anne County's exercise of its revisory power, however, does not amount to a determination that a conviction was wrongly imposed, as would be the case if its judgment had been "reversed or overturned" on appeal. Because Ms. Alston's conviction was final, and was not reversed or overturned on appeal, we hold that the 24th Legislative District seat is vacant.

II. The Prince George's County Democratic Central Committee has the right to withdraw the submission of Mr. Hall's name to the Governor anytime before the Governor makes an appointment.

Mr. Hall maintains that any attempt by the Central Committee to take any action on the Governor's request to withdraw Hall's name is a violation of Article III, § 13 of the Constitution of Maryland. Article III, § 13(a) provides, in pertinent part:

> (1) In case of . . . removal . . . of any person who shall have been chosen as a Delegate or Senator, . . . the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee of the political party, if any, with which the Delegate, so vacating, had been affiliated, . . . and it shall be the duty of the Governor to make said appointment within 15 days after the submission thereof to him.
>
> (2) If a name is not submitted by the Central Committee within thirty days after the occurrence of the vacancy, the Governor within another period of 15 days shall appoint a person, who…is otherwise properly qualified to hold the office of Delegate…in the District…

Thus, the Central Committee has 30 days from the occurrence of the vacancy to submit a replacement to the Governor. It is undisputed that once the submission of a name is made by the Central Committee, the Governor has little discretion and is constitutionally required to appoint the person whose name is submitted by the Central Committee. *Atty. Gen. Letter of Advice to the Honorable Jake Mohorovic* (Nov. 26, 2002) ("If the Central Committee has submitted a single name …, the Governor must make that appointment, although the Governor could ask the Central Committee to reconsider its nomination.") If the Central Committee does not make a recommendation within the 30-day window, however, the Governor is free to make an appointment from any qualified resident of the district of the same political party as the vacating member. *Atty. Gen. Letter of Advice to the Honorable Jolene Ivey* (Nov. 20, 2012).

Mr. Hall argues that the Committee has no power, authorization, or justification to "withdraw" his nomination to fill the vacated 24th Legislative District seat. On the other hand, the Central Committee argues that its constitutional right to submit inherently includes the right to withdraw a submission before an appointment is complete. Mr. Hall is correct in his assertion that a literal reading of Article III, § 13 reveals that the text does not explicitly grant the Central Committee the power to rescind or withdraw a submission. The Committee, however, argues that whenever the power to nominate and the power to confirm or execute the appointment are vested in two separate entities, they have the inherent right to withdraw the submission until the appointment is complete. We agree.

The most reasonable interpretation of Article III, § 13 is that where the text explicitly grants the Central Committee the right to submit a name, it also implicitly confers upon them the inherent right to withdraw that submission. This interpretation is consistent with the understanding that certain powers under the Constitution are granted implicitly by the text, rather than explicitly. For example, Article II, § 10 of the Maryland Constitution confers on the Governor the power to appoint senior state officials "with the advice and consent of the Senate." That provision does not expressly give the Governor the right to withdraw a nomination before the Senate acts. Yet, the Governor clearly has that power. As the Attorney General has determined, "nothing prevents the Governor from withdrawing a nomination that has not been acted upon by the Senate." Opinion No. 87-021, 72 *Op. Atty. Gen. Md.* 274 (1987).[34]

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[34] The Attorney General's conclusion is in harmony with the holdings of those state courts that have considered the matter. "[W]here then nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested." *In re Commission on the Governorship*, 26 Cal. 3d. 110, 603 P. 2d 1357, 1365

We must next turn to whether the Central Committee had the right to withdraw Mr. Hall's name, even after expiration of the prescribed 30-day period. To resolve this issue, the Court must address whether Mr. Hall's appointment was ever completed. "To constitute a valid appointment to office there must be some open, unequivocal act of appointment on the part of the officer or body empowered to make it." *Goodman v. Clerk of Circuit Court for Prince George's County*, 291 Md. 325, 329 (1971) (citations omitted). The Attorney General has opined that "the signing of the commission [by the governor] was clearly necessary to complete the appointment" of an individual to fill a vacant seat in the House of Delegates. 62 *Op. Atty. Gen. Md.* 453 (1977). This opinion is consistent with the principle announced by the Court of Appeals that the appointment of a state official is not complete upon nomination by the Governor, but only upon confirmation by the Senate. *Dyer v. Bayne*, 54 Md. 87, 101-02 (1880). In this case, the mere submission of Mr. Hall's name to the Governor by the Central Committee did not confer any office on Mr. Hall. His appointment could not be complete unless and until the Governor actually issued a commission appointing him to the 24th Legislative District seat. Mr. Hall was not appointed and no commission has been issued.

At the December 4, 2012 hearing, Mr. Hall argued that he was the Central Committee's "appointee" under the language of Article III, § 13(a)(1). That provision provides in pertinent part:

> ...[T]he Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee of the political party, if any, with which the Delegate or Senator, so vacating, had been affiliated, at the time of the last election or appointment of the vacating Senator or

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(1979) (quoting *Machesney v. Sampson*, 23 S.W. 2d 584, 586-87 (Ky. 1930)). *Accord*, *Cook v. Coelho*, 921 P.2d 1126, 1129 (Alaska 1996); *Burke v. Schmidt*, 191 N.W.2d 281, 284 (S.D. 1971).

> Delegate, in the County or District from which he or she was appointed or elected, provided that the *appointee* shall be of the same political party.

Md. Const. Article III, 13(a)(1)(emphasis added). We do not agree with Mr. Hall's reading of the text. The word "appointee" clearly refers to the person whom the Governor has already appointed, not to the selection of the Central Committee. Accordingly, Mr. Hall is not an appointee to the 24th Legislative District seat.

Given that Mr. Hall's appointment was not completed, we find the Central Committee retains its power to withdraw its submission until the Governor signs the commission. *Atty. Gen. Letter of Advice to the Honorable Jolene Ivey* (Nov. 20, 2012). We conclude, as the Attorney General did, that when the reconsideration occurs outside the 30-day window, the Central Committee forfeits its power to have its choice of a new submission be binding upon the Governor. *See* 62 *Op. Atty. Gen. Md.* 442, 448 (1977).

Mr. Hall further argues that a withdrawal of his name by the Central Committee would also violate Article 24 of the Maryland Declaration of Rights as a deprivation of a property interest without due process. We disagree. It is well established that no one has a contractual or vested property right to a public office. *See, e.g., Duer v. Dashiell*, 91 Md. 660, 667 (1990); *see also Town of Glenarden v. Bromery*, 257 Md. 19, 26-27 (1970). Under Article III, § 13(a)(2), the Central Committee's original selection is not vested with a right to the office solely by virtue of its submission. Mr. Hall has no contractual or property rights in the vacated 24th Legislative District seat and thus, no interests protected by the due process right under Article 24.

The withdrawal of Gregory Hall's name by the Central Committee would neither violate Article III, § 13 of the Constitution nor Article 24 of the Declaration of RIghts. Therefore, the Central Committee may withdraw the submission of Mr. Hall.

III. The constitutional provision requiring that the Governor act with 15 days is directory—not mandatory.

The name of Gregory Hall was submitted by the Central Committee to the Governor on November 7, 2012. Pursuant to Article III, § 13(a)(1) of the Maryland Constitution, "it shall be the duty of the Governor to make said appointment within 15 days after the submission thereof to him." The issue is whether the word "shall" here is mandatory or directory. According to Mr. Hall, the duty of the Governor to appoint the person selected by the Central Committee is a ministerial act for which the governor has no discretion. Mr. Hall argues that the words "it shall be the duty to appoint" create a mandatory timeframe within which the Governor must act.

While it is certainly true that the use of the word "shall" is commonly construed as mandatory language, it is not invariably so. *See Bond v. Baltimore*, 118 Md. 159, 166 (1912) ("Whether a particular statute is mandatory or directory does not depend upon its form, but upon the intention of the Legislature, to be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other." (quotation omitted)) Indeed, there are multiple constitutional provisions that would appear to create mandatory timeframes and obligations, but have been interpreted as directory. For example, the Court of Appeals held that the requirement under Article IV, § 23 of the Maryland Constitution that circuit court opinions "shall" be filed in writing within 60 days after argument or submission was merely directory. *See Myers v. State*, 218 Md. 49, 51 (1958).

Although it is a case of first impression, the Attorney General has long advised that the 15-day timeframe for the Governor to appoint is directory, not mandatory. *See* 62 *Op. Atty. Gen. Md.* 453 (1977) ("in case involving uncertainty regarding nominee to replace

deceased delegate and ensuing litigation resulting in no name being submitted, Governor's failure to make appointment of successor within 15 days was not unreasonable). If we were to view the timeframe as mandatory, and the 15 days had passed, it would appear that the Governor would lack the power to make the appointment, that no one else would have that power, and the vacancy would remain unfilled. *Id.* at 462 (if the Governor is deemed to have irretrievably lost the power to appoint by reason of the expiration of the 15-day period, then no other body or official would have that power under the Constitution or laws applicable to the filling of vacancies in the House of Delegates. This would result in the position remaining vacant until the conclusion of the term.") The entire purpose of Art. III, § 13 is to fill a vacancy. An interpretation that leaves a seat vacant is contrary to both the intent of the drafters and to public policy.

"Where the directions of a statute look to the orderly and prompt conduct of business, including the business of a court, it is generally regarded as directory unless consequences for failure to act in accordance with the statute are set out. Statutory provisions fixing the time for performance of acts are held to be directory where there are no negative words restraining the doing of the act after the time specified and no penalty is imposed for delay." *Scherr v. Braun*, 211 Md. 553, 561 (1956) (citing Crawford, *Statutory Construction*, Secs. 268, 269). Here, the Constitution does not prescribe any consequences to the Governor when he fails to make an appointment within 15 days. If the intent of the 15-day period had been to take the appointment out of the Governor's hands and make it automatic, it had the ability to do so. But it did not. Instead, it appears that the provision exclusively authorizes the Governor to make the appointment and was intended to encourage the appointment of a replacement in a timely way, which ordinarily can be accomplished with 15 days—but not always.

If the 15 day time period were intended to be mandatory, there would or could be provisions and consequences included to ensure the timely installation of the appointee. However, this is not the case. In another one of the Governor's constitutional duties, the signing and vetoing of bills passed by the General Assembly, a provision is included to ensure every bill submitted to the Governor is dealt with within 30 days. Art. II, § 17 (c) of the Maryland Constitution states that "Any Bill presented to the Governor… shall become law without the Governor's signature unless it is vetoed by the Governor within 30 days after its presentment." This provision is intended to prevent the Governor from not signing bills indefinitely and provides a definitive consequence for his failure to act. The Constitution could have, but does not, prescribe similar consequences to Art. III, § 13.

In addition, we agree with the Governor that the object and purpose of Article III, § 13 is to protect the prerogative of the Central Committee, not Mr. Hall. At the December 4, 2012 hearing, the Central Committee argued that it does not want Mr. Hall to be its selection.[35] Interpreting the 15-day timeframe as directory will not act to subvert the authority of the Central Committee. Rather, it will permit them to exercise it. Thus, neither the nature nor the object of Article III, § 3 support Mr. Hall's interpretation.

When considering the factors set out in *Bond,* including the entirety of the provision, the intent of the drafters, the object of the provision, and the consequences of interpreting the 15-day timeframe as mandatory, we find that the 15-day timeframe in Article III, § 13 is

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[35] *N.B.*, The Central Committee initially choose Mr. Hall on November 2, 2012. After meeting to discuss withdrawing his name on November 20th, they voted not to withdraw his name. At the meeting on November 26th, they did not withdraw his name (as consented to earlier that day in this Court), but merely took a sense of the committee that they would vote to withdraw Mr. Hall's name if given the chance. Recognizing the political reality of the situation, should the Central Committee choose not to not to withdraw Mr. Hall's name expeditiously and in conformity with their rules, we would then entertain a Motion to Reconsider on the issue of the Writ of Mandamus.

directory. Therefore, the Governor was not required as of November 26, 2012 to appoint Mr. Hall to the 24th Legislative District seat. The Governor may await a further vote of the Central Committee before making an appointment to fill the vacancy.

Conclusion

Accordingly, it is this 5th day of December, 2012, by the Circuit Court for Prince George's County, Maryland, hereby

ORDERED, that Defendants' Motions for Summary Judgment are **GRANTED** and judgment shall be entered in favor of Defendants Prince George's County Democratic Central Committee, Governor Martin O'Malley, and Speaker Michael E. Busch and against Plaintiffs Gregory Hall and Tiffany Alston on all claims; and it is further

ORDERED, that Gregory Hall's Motion for Summary Judgment is **DENIED**; and it is further

ORDERED, that any and all other requests for relief in Gregory Hall's Verified Second Amended Complaint for Writ of Mandamus, Temporary Restraining Order and Preliminary and Permanent Injunctive Relief, and Declaratory Judgment are **DENIED**; and it is further

ORDERED, that any and all other requests for relief in Tiffany Alston's Complaint for Temporary, Preliminary, and Permanent Equitable Relief Including Declaratory Relief, Writ of Mandamus, and Writ of Prohibition are **DENIED**; and it is further

ORDERED, that the Clerk of the Circuit Court enter final judgment in favor of Defendants Prince George's County Democratic Central Committee, Governor Martin O'Malley, and Speaker Michael E. Busch; and it is further

ORDERED, that the Clerk of the Circuit Court close this case statistically.

Original Signed

C. Philip Nichols, Jr., Judge

Copies mailed by the Court to:

THE HONORABLE PAUL F. HARRIS, JR.
Circuit Court
for Anne Arundel County, Maryland
7 Church Circle
Annapolis, MD 21401

JOSEPH E. SANDLER, ESQ.
ELIZABETH F. GETMAN, ESQ.
Sandler Reiff Young & Lamb PC
1025 Vermont Ave, NW Suite 300
Washington, DC 20005
Counsel for the Prince George's County Democratic Central Committee

WALTER W. GREEN, ESQ.
Law Office of Walter W. Green
7309 Baltimore Avenue Suite 115
College Park, MD 20740
Counsel for Gregory Hall

RAOUF M. ABDULLAH, ESQ.
Raouf M. Abdullah & Assoc., LLC
14714 Main Street
Upper Marlboro, Maryland 20772
Counsel for Tiffany Alston

THE HONORABLE DOUGLAS F. GANSLER
Attorney General of Maryland

MATTHEW J. FADER, ESQ.
DANIEL FRIEDMAN, ESQ.
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
Counsel for Governor Martin O`Malley and the Speaker Michael Busch

_____
FRANK J. LAZZARO, Law Clerk

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

GREGORY HALL	*	
Plaintiff,	*	
v.	*	CASE NO.: CAL12-36913
PRINCE GEORGE'S COUNTY DEMOCRATIC CENTRAL COMMITTEE	*	
AND	*	
MARTIN O'MALLEY Governor of the State of Maryland and Individually	*	
AND	*	
MICHAEL E. BUSCH Speaker of the House of Delegates and Individually	*	
Defendants,	*	
v.	*	
TIFFANY T. ALSTON	*	
Third-Party Plaintiff/ Intervener.	*	

DECLARATION OF RIGHTS

This matter came before the Court on December 4, 2012 for a hearing on Plaintiffs' motions for writs of mandamus and injunctive relief and cross-motions for summary judgment. Upon consideration of the arguments, it is this 5th day of December, 2012, by the Circuit Court for Prince George's County, Maryland, hereby

ADJUDGED AND DECLARED that Plaintiff Tiffany Alston was removed by operation of law from her seat as Delegate in the 24th Legislative District in the House of

Delegates as of October 9, 2012, and she has not subsequently been restored to that office; and it is further

ADJUDGED AND DECLARED that the Prince George's County Democratic Central Committee had the right as of November 26, 2012 to withdraw its submission of the name of Gregory Hall to the Governor, and maintains that right unless and until the Governor appoints Mr. Hall as a delegate; and it is further

ADJUDGED AND DECLARED that the Governor was not required as of November 26, 2012 to appoint Mr. Hall as a Delegate, and may await the vote of the Prince George's County Democratic Central Committee to withdraw the submitted name of Gregory Hall before acting to fill the vacancy; and it is further

ADJUDGED AND DECLARED that should the Central Committee withdraw the name of Gregory Hall and make a new submission, that submission would not be binding upon the Governor.

Original Signed

C. PHILIP NICHOLS, JR., Judge

Copies mailed by the Court to:

THE HONORABLE PAUL F. HARRIS, JR.
Circuit Court
for Anne Arundel County, Maryland
7 Church Circle
Annapolis, MD 21401

WALTER W. GREEN, ESQ.
Law Office of Walter W. Green
7309 Baltimore Avenue Suite 115
College Park, MD 20740
Counsel for Gregory Hall

JOSEPH E. SANDLER, ESQ.
ELIZABETH F. GETMAN, ESQ.
Sandler Reiff Young & Lamb PC
1025 Vermont Ave, NW Suite 300
Washington, DC 20005
Counsel for the Prince George's County Democratic Central Committee

RAOUF M. ABDULLAH, ESQ.
Raouf M. Abdullah & Assoc., LLC
14714 Main Street
Upper Marlboro, Maryland 20772
Counsel for Tiffany Alston

THE HONORABLE DOUGLAS F. GANSLER
Attorney General of Maryland

MATTHEW J. FADER, ESQ.
DANIEL FRIEDMAN, ESQ.
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
Counsel for Governor Martin O`Malley and the Speaker Michael Busch

_____
FRANK J. LAZZARO, Law Clerk